

Senate File 2392 - Enrolled

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SENATE FILE 2392

AN ACT

TO REGULATE VIATICAL SETTLEMENTS, AND PROVIDING FOR FEES AND PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 508E.1A SHORT TITLE.

This Act may be cited as the "Viatical Settlements Act".

Sec. 2. Section 508E.2, Code 2007, is amended to read as follows:

508E.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio; television; the internet; or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

2. "Business of viatical settlements" means an activity involved in but not limited to the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner acquiring an interest in a life insurance policy by means of a viatical settlement contract.

3. "Chronically ill" means any of the following:

a. Being unable to perform or maintain at least two activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence.

b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

c. Having a level of disability similar to that described in paragraph "a" as determined by the United States secretary of health and human services.

4. "Commissioner" means the commissioner of insurance.

5. a. "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but subject to all of the following:

(1) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies.

(2) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

b. "Financing entity" does not include a nonaccredited investor or a viatical settlement purchaser.

6. "Fraudulent viatical settlement act" includes any of the following:

a. An act or omission committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including any of the following:

(1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

3 4 (a) An application for the issuance of a viatical
3 5 settlement contract or insurance policy.
3 6 (b) The underwriting of a viatical settlement contract or
3 7 insurance policy.
3 8 (c) A claim for payment or benefit pursuant to a viatical
3 9 settlement contract or insurance policy.
3 10 (d) Premiums paid on an insurance policy.
3 11 (e) Payments and changes in ownership or beneficiary made
3 12 in accordance with the terms of a viatical settlement contract
3 13 or insurance policy.
3 14 (f) The reinstatement or conversion of an insurance
3 15 policy.
3 16 (g) In the solicitation, offer, effectuation, or sale of a
3 17 viatical settlement contract or insurance policy.
3 18 (h) The issuance of written evidence of viatical
3 19 settlement contract or insurance policy.
3 20 (i) A financing transaction.
3 21 (2) Employing any plan, financial structure, device,
3 22 scheme, or artifice to defraud related to viaticated policies.
3 23 (3) Entering into any practice or plan which involves
3 24 stranger-originated life insurance.
3 25 (4) Failing to disclose to the insurer when requested by
3 26 the insurer that the prospective insured has undergone a life
3 27 expectancy evaluation by any person or entity other than the
3 28 insurer or its authorized representative in connection with
3 29 the issuance of the policy.
3 30 b. In the furtherance of a fraud or to prevent the
3 31 detection of a fraud to do, or permit an employee or agent to
3 32 do, any of the following:
3 33 (1) Remove, conceal, alter, destroy, or sequester from the
3 34 commissioner the assets or records of a licensee or other
3 35 person engaged in the business of viatical settlements.
4 1 (2) Misrepresent or conceal the financial condition of a
4 2 licensee, financing entity, insurer, or other person.
4 3 (3) Transact the business of viatical settlements in
4 4 violation of laws requiring a license, certificate of
4 5 authority, or other legal authority for the transaction of the
4 6 business of viatical settlements.
4 7 (4) File with the commissioner or the equivalent chief
4 8 insurance regulatory official of another jurisdiction a
4 9 document containing false information or otherwise conceal
4 10 information about a material fact from the commissioner.
4 11 c. Embezzlement, theft, misappropriation, or conversion of
4 12 moneys, funds, premiums, credits, or other property of a
4 13 viatical settlement provider, insurer, insured, viator,
4 14 insurance policyowner, or any other person engaged in the
4 15 business of viatical settlements or insurance.
4 16 d. Recklessly entering into, negotiating, brokering, or
4 17 otherwise dealing in a viatical settlement contract, the
4 18 subject of which is a life insurance policy that was obtained
4 19 by presenting false information concerning any fact material
4 20 to the policy or by concealing, for the purpose of misleading
4 21 another, information concerning any fact material to the
4 22 policy, where the person or the persons intended to defraud
4 23 the policy's issuer, the viatical settlement provider, or the
4 24 viator. As used in this paragraph, "recklessly" means
4 25 engaging in the conduct in conscious and clearly unjustifiable
4 26 disregard of a substantial likelihood of the existence of the
4 27 relevant facts or risks, such disregard involving a gross
4 28 deviation from acceptable standards of conduct.
4 29 e. Facilitating the change of state of ownership of a
4 30 policy or certificate or the state of residency of a viator to
4 31 a state or jurisdiction that does not have a law similar to
4 32 this chapter for the express purposes of evading or avoiding
4 33 the provisions of this chapter.
4 34 f. Attempting to commit, assisting, aiding or abetting in
4 35 the commission of, or conspiracy to commit the acts or
5 1 omissions specified in this subsection.
5 2 7. "Life insurance producer" means any person licensed in
5 3 this state as a resident or nonresident insurance producer who
5 4 has received qualification or authority for life insurance
5 5 coverage or a life line of coverage pursuant to chapter 522B.
5 6 8. "Person" means a natural person or a legal entity,
5 7 including, without limitation, an individual, partnership,
5 8 limited liability company, association, trust, or corporation.
5 9 9. "Policy" means an individual or group policy, group
5 10 certificate, contract, or arrangement of life insurance owned
5 11 by a resident of this state, regardless of whether delivered
5 12 or issued for delivery in this state.
5 13 10. "Related provider trust" means a titling trust or
5 14 other trust established by a licensed viatical settlement

5 15 provider or a financing entity for the sole purpose of holding
5 16 the ownership or beneficial interest in purchased policies in
5 17 connection with a financing transaction. The trust shall have
5 18 a written agreement with the licensed viatical settlement
5 19 provider under which the licensed viatical settlement provider
5 20 is responsible for ensuring compliance with all statutory and
5 21 regulatory requirements and under which the trust agrees to
5 22 make all records and files related to viatical settlement
5 23 transactions available to the commissioner as if those records
5 24 and files were maintained directly by the licensed viatical
5 25 settlement provider.

5 26 11. "Special purpose entity" means a corporation,
5 27 partnership, trust, limited liability company, or other
5 28 similar entity formed solely to provide either directly or
5 29 indirectly access to institutional capital markets for or in
5 30 connection with any of the following:

5 31 a. For a financing entity or licensed viatical settlement
5 32 provider.

5 33 b. (1) In connection with a transaction in which the
5 34 securities in the special purposes entity are acquired by the
5 35 viator or by qualified institutional buyers as defined in 17
6 1 C.F.R. } 230.144 promulgated by the United States securities
6 2 and exchange commission under the federal Securities Act of
6 3 1933, as amended, 15 U.S.C. } 77a et seq.

6 4 (2) In connection with a transaction in which the
6 5 securities pay a fixed rate of return commensurate with
6 6 established asset-backed institutional capital markets.

6 7 12. "Stranger-originated life insurance" means a practice
6 8 or an act to initiate a life insurance policy for the benefit
6 9 of a third-party investor who, at the time of policy
6 10 origination, has no insurable interest in the insured.

6 11 a. Stranger-originated life insurance practices include
6 12 cases in which life insurance is purchased with resources or
6 13 guarantees from or through a person or entity who, at the time
6 14 of the policy inception, could not lawfully initiate the
6 15 policy by the person or entity, and where, at the time of the
6 16 policy's inception, there is an arrangement or agreement,
6 17 whether verbal or written, to directly or indirectly transfer
6 18 the ownership of the policy or the policy benefits to a third
6 19 party. Trusts that are created to give the appearance of an
6 20 insurable interest, and are used to initiate policies for
6 21 investors, violate insurable interest laws and the prohibition
6 22 against wagering on life.

6 23 b. Stranger-originated life insurance arrangements do not
6 24 include those practices set forth in subsection 15, paragraph
6 25 "d".

6 26 3- 13. "Terminally ill" means having an illness or
6 27 sickness that can reasonably be expected to result in death in
6 28 twenty-four months or less.

6 29 14. "Viatical settlement broker" means a person, including
6 30 a life insurance producer as provided for in section 508E.3,
6 31 who, working exclusively on behalf of a viator and for a fee,
6 32 commission, or other valuable consideration, offers or
6 33 attempts to negotiate viatical settlement contracts between a
6 34 viator and one or more viatical settlement providers or one or
6 35 more viatical settlement brokers. Notwithstanding the manner

7 1 in which the viatical settlement broker is compensated, a
7 2 viatical settlement broker is deemed to represent only the
7 3 viator, and not the insurer or the viatical settlement
7 4 provider, and owes a fiduciary duty to the viator to act
7 5 according to the viator's instructions and in the best
7 6 interest of the viator. "Viatical settlement broker" does not
7 7 include an attorney, certified public accountant, or a
7 8 financial planner accredited by a nationally recognized
7 9 accreditation agency who is retained to represent the viator
7 10 and whose compensation is not paid directly or indirectly by
7 11 the viatical settlement provider or purchaser.

7 12 4- 15. a. "Viatical settlement contract" means a written
7 13 agreement entered into between a viator and a viatical
7 14 settlement provider and a person who owns or is insured under
7 15 a life insurance or any affiliate of the viatical settlement
7 16 provider establishing the terms under which compensation or
7 17 anything of value is or will be paid, which compensation or
7 18 value is less than the expected death benefits of the policy
7 19 in return for the viator's present or future assignment,
7 20 transfer, sale, devise, or bequest of the death benefit or
7 21 ownership of any portion of the insurance policy or
7 22 certificate, or who owns or is covered under a group life of
7 23 insurance policy.

7 24 b. "Viatical settlement contract" includes a premium
7 25 finance loan made for a life insurance policy by a lender to a

7 26 viator on, before, or after the date of issuance of the policy
7 27 where any of the following applies:

7 28 (1) The viator or the insured receives on the date of the
7 29 premium finance loan a guarantee of a future viatical
7 30 settlement value of the policy.

7 31 (2) The viator or the insured agrees on the date of the
7 32 premium finance loan to sell the policy or any portion of its
7 33 death benefit on any date following the issuance of the
7 34 policy.

7 35 c. "Viatical settlement contract" also includes the
8 1 transfer for compensation or value of ownership or beneficial
8 2 interest in a trust or other entity that owns a life insurance
8 3 policy if the trust or other entity was formed or availed of
8 4 for the principal purpose of acquiring one or more life
8 5 insurance policies, which life insurance policy insures the
8 6 life of a person residing in this state.

8 7 d. "Viatical settlement contract" does not mean a written
8 8 agreement entered into between a viator and a person having an
8 9 insurable interest in the viator's life. include any of the
8 10 following:

8 11 (1) A policy loan or accelerated death benefit made by the
8 12 insurer pursuant to the policy's terms.

8 13 (2) Loan proceeds that are used solely to pay any of the
8 14 following:

8 15 (a) Premiums for the policy.

8 16 (b) The costs of the loan, including, without limitation,
8 17 interest, arrangement fees, utilization fees and similar fees,
8 18 closing costs, legal fees and expenses, trustee fees and
8 19 expenses, and third-party collateral provider fees and
8 20 expenses, including fees payable to letter of credit issuers.

8 21 (3) A loan made by a bank or other licensed financial
8 22 institution in which the lender takes an interest in a life
8 23 insurance policy solely to secure repayment of a loan or, if
8 24 there is a default on the loan and the policy is transferred,
8 25 the transfer of such a policy by the lender, provided that
8 26 neither the default itself nor the transfer of the policy in
8 27 connection with such default is pursuant to an agreement or
8 28 understanding with any other person for the purpose of evading
8 29 regulation under this chapter.

8 30 (4) A loan made by a lender that does not violate
8 31 insurance premium finance law, provided that the premium
8 32 finance loan is not described in paragraph "b".

8 33 (5) An agreement where all the parties are closely related
8 34 to the insured by blood or law; have a lawful substantial
8 35 economic interest in the continued life, health, and bodily
9 1 safety of the person insured; or are trusts established
9 2 primarily for the benefit of such parties.

9 3 (6) Any designation, consent, or agreement by an insured
9 4 who is an employee of an employer in connection with the
9 5 purchase by the employer, or trust established by the
9 6 employer, of life insurance on the life of the employee.

9 7 (7) A bona fide business succession planning arrangement
9 8 between one or more of the following:

9 9 (a) Shareholders in a corporation or between a corporation
9 10 and one or more of its shareholders or one or more trusts
9 11 established by its shareholders.

9 12 (b) Partners in a partnership or between a partnership and
9 13 one or more of its partners or one or more trusts established
9 14 by its partners.

9 15 (c) Members in a limited liability company or between a
9 16 limited liability company and one or more of its members or
9 17 one or more trusts established by its members.

9 18 (8) An agreement entered into by a service recipient, or a
9 19 trust established by the service recipient, and a service
9 20 provider, or a trust established by the service provider, who
9 21 performs significant services for the service recipient's
9 22 trade or business.

9 23 (9) Any other contract, transaction, or arrangement
9 24 exempted from the definition of viatical settlement contract
9 25 by the commissioner based on a determination that the
9 26 contract, transaction, or arrangement is not of the type
9 27 intended to be regulated by this chapter.

9 28 16. a. "Viatical settlement provider" means a person,
9 29 other than a viator, that enters into or effectuates a
9 30 viatical settlement contract with a viator resident in this
9 31 state.

9 32 b. "Viatical settlement provider" does not include any of
9 33 the following:

9 34 (1) A bank, savings bank, savings and loan association,
9 35 credit union, or other licensed lending institution that takes
10 1 an assignment of a life insurance policy solely as collateral

10 2 for a loan.
10 3 (2) The issuer of the life insurance policy.
10 4 (3) An authorized or eligible insurer that provides
10 5 stop-loss coverage or financial guaranty insurance to a
10 6 viatical settlement provider, purchaser, financing entity,
10 7 special purpose entity, or related provider trust.
10 8 (4) A natural person who enters into or effectuates no
10 9 more than one agreement in a calendar year for the transfer of
10 10 life insurance policies for any value less than the expected
10 11 death benefit.
10 12 (5) A financing entity.
10 13 (6) A special purpose entity.
10 14 (7) A related provider trust.
10 15 (8) A viatical settlement purchaser.
10 16 (9) Any other person that the commissioner determines is
10 17 not the type of person intended to be covered by the
10 18 definition of viatical settlement provider.
10 19 17. a. "Viatical settlement purchaser" means a person who
10 20 provides a sum of money as consideration for a life insurance
10 21 policy or an interest in the death benefits of a life
10 22 insurance policy, or a person who owns or acquires or is
10 23 entitled to a beneficial interest in a trust that owns a
10 24 viatical settlement contract or is the beneficiary of a life
10 25 insurance policy that has been or will be the subject of a
10 26 viatical settlement contract, for the purpose of deriving an
10 27 economic benefit.
10 28 b. "Viatical settlement purchaser" does not include any of
10 29 the following:
10 30 (1) A licensee under this chapter.
10 31 (2) An accredited investor or qualified institutional
10 32 buyer as defined, respectively, in 17 C.F.R. } 230.501(a) or
10 33 17 C.F.R. } 230.144A as promulgated by the United States
10 34 securities and exchange commission under the federal
10 35 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.
11 1 (3) A financing entity.
11 2 (4) A special purpose entity.
11 3 (5) A related provider trust.
11 4 18. "Viaticated policy" means a life insurance policy or
11 5 certificate that has been acquired by a viatical settlement
11 6 provider pursuant to a viatical settlement contract.
11 7 5. 19. a. "Viator" means a person selling the owner of a
11 8 life insurance policy or a certificate holder under a group
11 9 policy who resides in this state and enters or seeks to enter
11 10 into a viatical settlement contract. "Viator" includes but is
11 11 not limited to an owner of a life insurance policy or a
11 12 certificate holder under a group policy insuring the life of
11 13 an individual with a terminal or chronic illness or condition
11 14 except where specifically addressed. If there is more than
11 15 one viator on a single policy and the viators are residents of
11 16 different states, the transaction shall be governed by the law
11 17 of the state in which the viator having the largest percentage
11 18 ownership resides or, if the viators hold equal ownership, the
11 19 state of residence of one viator agreed upon in writing by all
11 20 the viators.
11 21 b. "Viator" does not include any of the following:
11 22 (1) A licensee under this chapter, including a life
11 23 insurance producer acting as a viatical settlement broker
11 24 pursuant to this chapter.
11 25 (2) A qualified institutional buyer as defined in 17
11 26 C.F.R. } 230.144=144A as promulgated by the United States
11 27 securities and exchange commission under the federal
11 28 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.
11 29 (3) A financing entity.
11 30 (4) A special purpose entity.
11 31 (5) A related provider trust.
11 32 Sec. 3. Section 508E.3, Code 2007, is amended by striking
11 33 the section and inserting in lieu thereof the following:
11 34 508E.3 LICENSE REQUIREMENTS.
11 35 1. a. A person shall not operate as a viatical settlement
12 1 provider or viatical settlement broker without first obtaining
12 2 a license from the commissioner of the state of residence of
12 3 the viator.
12 4 b. (1) A life insurance producer who has been duly
12 5 licensed as a resident insurance producer with a life line of
12 6 authority in this state or the life insurance producer's home
12 7 state for at least one year and is licensed as a nonresident
12 8 producer in this state shall be deemed to meet the licensing
12 9 requirements of this section and shall be permitted to operate
12 10 as a viatical settlement broker.
12 11 (2) Not later than thirty days from the first day of
12 12 operating as a viatical settlement broker, the life insurance

12 13 producer shall notify the commissioner that the life insurance
12 14 producer is acting as a viatical settlement broker on a form
12 15 prescribed by the commissioner, and shall pay any applicable
12 16 fee of up to one hundred dollars as provided by rules adopted
12 17 by the commissioner. The notification shall include an
12 18 acknowledgment by the life insurance producer that the life
12 19 insurance producer will operate as a viatical settlement
12 20 broker in accordance with this chapter.

12 21 (3) The insurer that issued the policy being viaticated
12 22 shall not be responsible for any act or omission of a viatical
12 23 settlement broker or viatical settlement provider arising out
12 24 of or in connection with the viatical settlement transaction,
12 25 unless the insurer receives compensation for the placement of
12 26 a viatical settlement contract from the viatical settlement
12 27 provider or viatical settlement broker in connection with the
12 28 viatical settlement contract.

12 29 c. A person licensed as an attorney, certified public
12 30 accountant, or financial planner accredited by a nationally
12 31 recognized accreditation agency who is retained to represent
12 32 the viator, whose compensation is not paid directly or
12 33 indirectly by the viatical settlement provider, may negotiate
12 34 viatical settlement contracts on behalf of the viator without
12 35 having to obtain a license as a viatical settlement broker.

13 1 2. An application for a viatical settlement provider or
13 2 viatical settlement broker license shall be made to the
13 3 commissioner by the applicant on a form prescribed by the
13 4 commissioner, and the application shall be accompanied by a
13 5 fee of not more than one hundred dollars as provided by rules
13 6 adopted by the commissioner.

13 7 3. A license may be renewed from year to year on the
13 8 anniversary date upon payment of the annual renewal fee of not
13 9 more than one hundred dollars as provided by rules adopted by
13 10 the commissioner. A failure to pay the fee by the renewal
13 11 date results in expiration of the license.

13 12 4. An applicant shall provide information on forms
13 13 required by the commissioner. The commissioner shall have
13 14 authority, at any time, to require the applicant to fully
13 15 disclose the identity of all stockholders, partners, officers,
13 16 members, and employees, and the commissioner may, in the
13 17 exercise of the commissioner's discretion, refuse to issue a
13 18 license in the name of a legal entity if not satisfied that
13 19 any officer, employee, stockholder, partner, or member thereof
13 20 who may materially influence the applicant's conduct meets the
13 21 standards of this chapter.

13 22 5. A license issued to a legal entity authorizes all
13 23 partners, officers, members, and designated employees to act
13 24 as viatical settlement providers or viatical settlement
13 25 brokers, as applicable, under the license, and all those
13 26 persons shall be named in the application and any supplements
13 27 to the application.

13 28 6. Upon the filing of an application and the payment of
13 29 the license fee, the commissioner shall make an investigation
13 30 of each applicant and issue a license if the commissioner
13 31 finds that the applicant complies with all of the following:

13 32 a. If a viatical settlement provider, has provided a
13 33 detailed plan of operation.

13 34 b. Is competent and trustworthy and intends to act in good
13 35 faith in the capacity involved by the license applied for.

14 1 c. Has a good business reputation and has had experience,
14 2 training, or education so as to be qualified in the business
14 3 for which the license is applied for.

14 4 d. If a legal entity, provides a certificate of good
14 5 standing from the state of its domicile.

14 6 e. If a viatical settlement provider or viatical
14 7 settlement broker, has provided an antifraud plan that meets
14 8 the requirements of section 508E.15, subsection 7.

14 9 7. The commissioner shall not issue a license to a
14 10 nonresident applicant unless a written designation of an agent
14 11 for service of process is filed and maintained with the
14 12 commissioner or the applicant has filed with the commissioner
14 13 the applicant's written irrevocable consent that any action
14 14 against the applicant may be commenced against the applicant
14 15 by service of process on the commissioner.

14 16 8. A viatical settlement provider or viatical settlement
14 17 broker shall provide to the commissioner new or revised
14 18 information about officers, ten-percent-or-more stockholders,
14 19 partners, directors, members, or designated employees within
14 20 thirty days of the change.

14 21 9. An individual licensed as a viatical settlement broker
14 22 shall complete on a biennial basis fifteen hours of training
14 23 related to viatical settlements and viatical settlement

14 24 transactions, as required by the commissioner; provided,
14 25 however, that a life insurance producer who is operating as a
14 26 viatical settlement broker pursuant to subsection 1, paragraph
14 27 "b", shall not be subject to the requirements of this
14 28 subsection. Any person failing to meet the requirements of
14 29 this subsection shall be subject to the penalties imposed by
14 30 the commissioner.

14 31 10. Fees collected pursuant to this section shall be
14 32 deposited into the general fund of the state.

14 33 Sec. 4. Section 508E.4, Code 2007, is amended by striking
14 34 the section and inserting in lieu thereof the following:

14 35 508E.4 LICENSE REVOCATION AND DENIAL.

15 1 1. The commissioner may refuse to issue, suspend, revoke,
15 2 or refuse to renew the license of a viatical settlement
15 3 provider or viatical settlement broker if the commissioner
15 4 finds that any of the following applies:

15 5 a. There was any material misrepresentation in the
15 6 application for the license.

15 7 b. The licensee or any officer, partner, member, or key
15 8 management personnel has been convicted of fraudulent or
15 9 dishonest practices, is subject to a final administrative
15 10 action, or is otherwise shown to be untrustworthy or
15 11 incompetent.

15 12 c. The viatical settlement provider demonstrates a pattern
15 13 of unreasonable payments to viators.

15 14 d. The licensee or any officer, partner, member, or key
15 15 management personnel has been found guilty of, or has pleaded
15 16 guilty or nolo contendere to, any felony, or to a misdemeanor
15 17 involving fraud or moral turpitude, regardless of whether a
15 18 judgment of conviction has been entered by the court.

15 19 e. The viatical settlement provider has entered into any
15 20 viatical settlement contract form that has not been approved
15 21 pursuant to this chapter.

15 22 f. The viatical settlement provider has failed to honor
15 23 contractual obligations set out in a viatical settlement
15 24 contract.

15 25 g. The licensee no longer meets the requirements for
15 26 initial licensure.

15 27 h. The viatical settlement provider has assigned,
15 28 transferred, or pledged a viaticated policy to a person other
15 29 than a viatical settlement provider licensed in this state,
15 30 viatical settlement purchaser, an accredited investor, or
15 31 qualified institutional buyer as defined respectively in 17
15 32 C.F.R. } 230.501(a) or 17 C.F.R. } 230.144A as promulgated by
15 33 the United States securities and exchange commission under the
15 34 federal Securities Act of 1933, as amended, 15 U.S.C. } 77a et
15 35 seq., a financing entity, special purpose entity, or related
16 1 provider trust.

16 2 i. The licensee or any officer, partner, member, or key
16 3 management personnel has violated any provision of this
16 4 chapter.

16 5 2. The commissioner may suspend, revoke, or refuse to
16 6 renew the license of a viatical settlement broker or a life
16 7 insurance producer operating as a viatical settlement broker
16 8 pursuant to this chapter if the commissioner finds that the
16 9 viatical settlement broker or life insurance producer has
16 10 violated the provisions of this chapter or has otherwise
16 11 engaged in bad faith conduct with one or more viators.

16 12 3. If the commissioner denies a license application or
16 13 suspends, revokes, or refuses to renew the license of a
16 14 viatical settlement provider or viatical settlement broker, or
16 15 suspends, revokes, or refuses to renew a license of a life
16 16 insurance producer operating as a viatical settlement broker
16 17 pursuant to this chapter, the commissioner shall conduct a
16 18 hearing in accordance with chapter 17A.

16 19 Sec. 5. NEW SECTION. 508E.5 APPROVAL OF VIATICAL
16 20 SETTLEMENT CONTRACTS AND DISCLOSURE STATEMENTS.

16 21 A person shall not use a viatical settlement contract form
16 22 or provide to a viator a disclosure statement form in this
16 23 state unless first filed with and approved by the
16 24 commissioner. The commissioner shall disapprove a viatical
16 25 settlement contract form or disclosure statement form if, in
16 26 the commissioner's opinion, the contract or provisions
16 27 contained therein fail to meet the requirements of sections
16 28 508E.8, 508E.10, 508E.14, and 508E.15, subsection 2, or are
16 29 unreasonable, contrary to the interests of the public, or
16 30 otherwise misleading or unfair to the viator. At the
16 31 commissioner's discretion, the commissioner may require the
16 32 submission of advertising material. The commissioner's
16 33 approval of any of the materials shall not be a defense or
16 34 otherwise preclude a civil action for fraud.

16 35 Sec. 6. NEW SECTION. 508E.6 REPORTING REQUIREMENTS AND
17 1 PRIVACY.

17 2 1. For any policy settled within five years of policy
17 3 issuance, each viatical settlement provider shall file with
17 4 the commissioner on or before March 1 of each year an annual
17 5 statement containing such information as the commissioner may
17 6 adopt by rule. In addition to any other requirements, the
17 7 annual statement shall specify the total number, aggregate
17 8 face amount, and life settlement proceeds of policies settled
17 9 during the immediately preceding calendar year, together with
17 10 a breakdown of the information by policy issue year. The
17 11 annual statement shall also include the names of the insurance
17 12 companies whose policies have been settled and the viatical
17 13 settlement brokers that have settled said policies. Such
17 14 information shall be limited to only those transactions where
17 15 the viator is a resident of this state. Notwithstanding
17 16 chapter 22, individual transaction data regarding the business
17 17 of viatical settlements or data that could compromise the
17 18 privacy of personal, financial, and health information of the
17 19 viator or insured shall be filed with the commissioner on a
17 20 confidential basis.

17 21 2. Except as otherwise allowed or required by law, a
17 22 viatical settlement provider, viatical settlement broker,
17 23 insurance company, insurance producer, information bureau,
17 24 rating agency or company, or any other person with actual
17 25 knowledge of an insured's identity shall not disclose that
17 26 identity as an insured, or the insured's financial or medical
17 27 information to any other person unless the disclosure is any
17 28 of the following:

17 29 a. Necessary to effect a viatical settlement between the
17 30 viator and a viatical settlement provider and the viator and
17 31 insured have provided prior written consent to the disclosure.

17 32 b. Provided in response to an investigation or examination
17 33 by the commissioner or any other governmental officer or
17 34 agency or pursuant to the requirements of section 508E.15,
17 35 subsection 3.

18 1 c. A term of or condition to the transfer of a policy by
18 2 one viatical settlement provider to another viatical
18 3 settlement provider.

18 4 d. Necessary to permit a financing entity, related
18 5 provider trust, or special purpose entity to finance the
18 6 purchase of policies by a viatical settlement provider and the
18 7 viator and insured have provided prior written consent to the
18 8 disclosure.

18 9 e. Necessary to allow the viatical settlement provider,
18 10 viatical settlement broker, or their authorized
18 11 representatives to make contacts for the purpose of
18 12 determining health status.

18 13 f. Required to purchase stop-loss coverage or financial
18 14 guaranty insurance.

18 15 Sec. 7. NEW SECTION. 508E.7 EXAMINATION OR
18 16 INVESTIGATIONS.

18 17 1. AUTHORITY, SCOPE, AND SCHEDULING OF EXAMINATIONS.

18 18 a. (1) The commissioner may conduct an examination under
18 19 this chapter of a licensee as often as the commissioner in the
18 20 commissioner's discretion deems appropriate after considering
18 21 the factors set forth in this paragraph "a".

18 22 (2) In scheduling and determining the nature, scope, and
18 23 frequency of the examinations, the commissioner shall consider
18 24 such matters as the consumer complaints, results of financial
18 25 statement analyses and ratios, changes in management or
18 26 ownership, actuarial opinions, reports of independent
18 27 certified public accountants, and other relevant criteria as
18 28 determined by the commissioner.

18 29 b. For purposes of completing an examination of a licensee
18 30 under this chapter, the commissioner may examine or
18 31 investigate any person, or the business of any person, in so
18 32 far as the examination or investigation is, in the sole
18 33 discretion of the commissioner, necessary or material to the
18 34 examination of the licensee.

18 35 c. In lieu of an examination under this chapter of any
19 1 foreign or alien licensee licensed in this state, the
19 2 commissioner may, at the commissioner's discretion, accept an
19 3 examination report on the licensee as prepared by the
19 4 commissioner for the licensee's state of domicile or
19 5 port-of-entry state.

19 6 d. As far as practical, the examination of a foreign or
19 7 alien licensee shall be made in cooperation with the insurance
19 8 supervisory officials of other states in which the licensee
19 9 transacts business.

19 10 2. RECORD RETENTION REQUIREMENTS.

19 11 a. A person required to be licensed pursuant to section
19 12 508E.3 shall for five years retain copies of all of the
19 13 following:

19 14 (1) Proposed, offered, or executed contracts, purchase
19 15 agreements, underwriting documents, policy forms, and
19 16 applications from the date of the proposal, offer, or
19 17 execution of the contract or purchase agreement, whichever is
19 18 later.

19 19 (2) All checks, drafts, or other evidence and
19 20 documentation related to the payment, transfer, deposit, or
19 21 release of funds from the date of the transaction.

19 22 (3) All other records and documents related to the
19 23 requirements of this chapter.

19 24 b. This section does not relieve a person of the
19 25 obligation to produce documents described in paragraph "a" to
19 26 the commissioner after the retention period has expired if the
19 27 person has retained the documents.

19 28 c. Records required to be retained by paragraph "a" must
19 29 be legible and complete and may be retained in paper,
19 30 photograph, microprocess, magnetic, mechanical, or electronic
19 31 media, or by any process that accurately reproduces or forms a
19 32 durable medium for the reproduction of a record.

19 33 3. CONDUCT OF EXAMINATIONS.

19 34 a. Upon determining that an examination should be
19 35 conducted, the commissioner shall issue an examination warrant
20 1 appointing one or more examiners to perform the examination
20 2 and instructing them as to the scope of the examination. In
20 3 conducting the examination, the examiner shall observe those
20 4 guidelines and procedures set forth in the examiners handbook
20 5 adopted by the national association of insurance
20 6 commissioners. The commissioner may also adopt rules for such
20 7 other guidelines or procedures as the commissioner may deem
20 8 appropriate.

20 9 b. Every licensee or person from whom information is
20 10 sought, its officers, directors, and agents shall provide to
20 11 the examiners timely, convenient, and free access at all
20 12 reasonable hours at its offices to all books, records,
20 13 accounts, papers, documents, assets, and computer or other
20 14 recordings relating to the property, assets, business, and
20 15 affairs of the licensee being examined. The officers,
20 16 directors, employees, and agents of the licensee or person
20 17 shall facilitate the examination and aid in the examination so
20 18 far as it is in their power to do so. The refusal of a
20 19 licensee, by its officers, directors, employees, or agents, to
20 20 submit to examination or to comply with any reasonable written
20 21 request of the commissioner shall be grounds for suspension or
20 22 refusal of, or nonrenewal of, any license or authority held by
20 23 the licensee to engage in the viatical settlement business or
20 24 other business subject to the commissioner's jurisdiction.
20 25 Any proceedings for suspension, revocation, or refusal of any
20 26 license or authority shall be conducted pursuant to section
20 27 507B.6A.

20 28 c. The commissioner shall have the power to issue
20 29 subpoenas, to administer oaths, and to examine under oath any
20 30 person as to any matter pertinent to the examination. Upon
20 31 the failure or refusal of a person to obey a subpoena, the
20 32 commissioner may petition a court of competent jurisdiction,
20 33 and upon proper showing, the court may enter an order
20 34 compelling the witness to appear and testify or produce
20 35 documentary evidence. A failure to obey the court order shall
21 1 be punishable as contempt of court.

21 2 d. When making an examination under this chapter, the
21 3 commissioner may retain attorneys, appraisers, independent
21 4 actuaries, independent certified public accountants, or other
21 5 professionals and specialists as examiners, the reasonable
21 6 cost of which shall be borne by the licensee that is the
21 7 subject of the examination.

21 8 e. Nothing contained in this chapter shall be construed to
21 9 limit the commissioner's authority to terminate or suspend an
21 10 examination in order to pursue other legal or regulatory
21 11 action pursuant to the insurance laws of this state. Findings
21 12 of fact and conclusions made pursuant to any examination shall
21 13 be prima facie evidence in any legal or regulatory action.

21 14 f. The commissioner's authority to use and, if
21 15 appropriate, to make public any final or preliminary
21 16 examination report, any examiner or licensee workpapers, or
21 17 other documents, or any other information discovered or
21 18 developed during the course of any examination in the
21 19 furtherance of any legal or regulatory action shall be
21 20 permitted consistent with section 507.14.

21 21 4. EXAMINATION REPORTS.

21 22 a. Examination reports shall be comprised of only facts
21 23 appearing upon the books, records, or other documents of the
21 24 licensee, its agents, or other persons examined, or as
21 25 ascertained from the testimony of its officers, agents, or
21 26 other persons examined concerning its affairs, and such
21 27 conclusions and recommendations as the examiners find
21 28 reasonably warranted from the facts.

21 29 b. Not later than sixty days following completion of the
21 30 examination, the examiner in charge shall file with the
21 31 commissioner a verified written report of examination under
21 32 oath. Upon receipt of the verified report, the commissioner
21 33 shall transmit the report to the licensee examined, together
21 34 with a notice that shall afford the licensee examined a
21 35 reasonable opportunity of not more than thirty days to make a
22 1 written submission or rebuttal with respect to any matters
22 2 contained in the examination report.

22 3 c. In the event the commissioner determines that
22 4 regulatory action is appropriate as a result of an
22 5 examination, the commissioner may initiate any proceedings or
22 6 actions provided by law.

22 7 5. CONFIDENTIALITY OF EXAMINATION INFORMATION.

22 8 a. Notwithstanding chapter 22, the names and individual
22 9 identification data for all viators shall be considered
22 10 private and confidential information and shall not be
22 11 disclosed by the commissioner, unless required by law.

22 12 b. Except as otherwise provided in this chapter, all
22 13 examination reports, working papers, recorded information,
22 14 documents, and copies thereof produced by, obtained by, or
22 15 disclosed to the commissioner or any other person in the
22 16 course of an examination made under this chapter, or in the
22 17 course of an analysis or investigation by the commissioner of
22 18 the financial condition or market conduct of a licensee, shall
22 19 be confidential by law and privileged, shall not be subject to
22 20 chapter 22, shall not be subject to subpoena, and shall not be
22 21 subject to discovery or admissible in evidence in any private
22 22 civil action. The commissioner is authorized to use the
22 23 documents, materials, or other information in the furtherance
22 24 of any regulatory or legal action brought as part of the
22 25 commissioner's official duties. All examination reports,
22 26 working papers, recorded information, documents, and their
22 27 copies produced by, obtained by, or disclosed to the
22 28 commissioner or any other person in the course of an
22 29 examination made under this chapter, or in the course of an
22 30 analysis or investigation by the commissioner of the financial
22 31 condition or market conduct of a licensee shall be privileged
22 32 and confidential in any judicial or administrative proceeding
22 33 except for any of the following:

22 34 (1) An administrative proceeding brought by the insurance
22 35 division under chapter 17A.

23 1 (2) A judicial review proceeding under chapter 17A brought
23 2 by an insurer to whom the records relate.

23 3 (3) An action or proceeding which arises out of the
23 4 criminal provisions of the laws of this state or the United
23 5 States.

23 6 c. Documents, materials, or other information, including
23 7 but not limited to all working papers and copies, in the
23 8 possession or control of the national association of insurance
23 9 commissioners and its affiliates and subsidiaries shall be
23 10 confidential by law and privileged, shall not be subject to
23 11 chapter 22, shall not be subject to subpoena, and shall not be
23 12 subject to discovery or admissible in evidence in any private
23 13 civil action if they are any of the following:

23 14 (1) Created, produced, or obtained by or disclosed to the
23 15 national association of insurance commissioners and its
23 16 affiliates and subsidiaries in the course of assisting an
23 17 examination made under this chapter, or assisting the
23 18 commissioner in the analysis or investigation of the financial
23 19 condition or market conduct of a licensee.

23 20 (2) Disclosed to the national association of insurance
23 21 commissioners and its affiliates and subsidiaries under
23 22 paragraph "d" by the commissioner.

23 23 (3) For the purposes of paragraph "b", "chapter" includes
23 24 the law of another state or jurisdiction that is substantially
23 25 similar to this chapter.

23 26 d. In order to assist in the performance of the
23 27 commissioner's duties, the commissioner may do all of the
23 28 following:

23 29 (1) Share documents, materials, or other information,
23 30 including the confidential and privileged documents,
23 31 materials, or information subject to paragraph "a", with other
23 32 state, federal, and international regulatory agencies, with

23 33 the national association of insurance commissioners and its
23 34 affiliates and subsidiaries, and with state, federal, and
23 35 international law enforcement authorities, provided that the
24 1 recipient agrees to maintain the confidentiality and
24 2 privileged status of the documents, materials, communications,
24 3 or other information.

24 4 (2) Receive documents, materials, communications, or
24 5 information, including otherwise confidential and privileged
24 6 documents, materials, or information, from the national
24 7 association of insurance commissioners and its affiliates and
24 8 subsidiaries, notwithstanding chapter 22, and from regulatory
24 9 and law enforcement officials of other foreign or domestic
24 10 jurisdictions, and shall maintain as confidential or
24 11 privileged any documents, materials, or information received
24 12 with notice or the understanding that it is confidential or
24 13 privileged under the laws of the jurisdiction that is the
24 14 source of the documents, materials, or information.

24 15 (3) Enter into agreements governing sharing and use of
24 16 information consistent with section 507.14, subsection 4.

24 17 e. No waiver of any applicable privilege or claim of
24 18 confidentiality in the documents, materials, or information
24 19 shall occur as a result of disclosure to the commissioner
24 20 under this section or as a result of sharing as authorized in
24 21 paragraph "c".

24 22 f. A privilege established under the law of any state or
24 23 jurisdiction that is substantially similar to the privilege
24 24 established under this subsection shall be available and
24 25 enforced in any proceeding in, and in any court of, this
24 26 state.

24 27 g. Nothing contained in this chapter shall prevent or be
24 28 construed as prohibiting the commissioner from disclosing the
24 29 content of an examination report, preliminary examination
24 30 report or results, or any matter relating thereto, to the
24 31 commissioner of any other state or country, or to law
24 32 enforcement officials of this or any other state or agency of
24 33 the federal government at any time or to the national
24 34 association of insurance commissioners, so long as such agency
24 35 or office receiving the report or matters relating thereto
25 1 agrees in writing to hold it confidential and in a manner
25 2 consistent with this chapter.

25 3 6. CONFLICT OF INTEREST.

25 4 a. An examiner may not be appointed by the commissioner if
25 5 the examiner, either directly or indirectly, has a conflict of
25 6 interest or is affiliated with the management of or owns a
25 7 pecuniary interest in any person subject to examination under
25 8 this chapter. This section shall not be construed to
25 9 automatically preclude an examiner from being any of the
25 10 following:

25 11 (1) A viator.

25 12 (2) An insured in a viaticated insurance policy.

25 13 (3) A beneficiary in an insurance policy that is proposed
25 14 to be viaticated.

25 15 b. Notwithstanding the requirements of paragraph "a", the
25 16 commissioner may retain from time to time, on an individual
25 17 basis, qualified actuaries, certified public accountants, or
25 18 other similar individuals who are independently practicing
25 19 their professions, even though these persons may from time to
25 20 time be similarly employed or retained by persons subject to
25 21 examination under this chapter.

25 22 7. COST OF EXAMINATIONS.

25 23 a. The commissioner may appoint insurance examiners who,
25 24 while conducting examinations, shall possess all the powers
25 25 conferred upon the commissioner for such purposes. The entire
25 26 time of the examiners shall be under the control of the
25 27 commissioner, and shall be employed as the commissioner may
25 28 direct.

25 29 b. The commissioner may, when in the commissioner's
25 30 judgment it is advisable, appoint assistants to aid in making
25 31 examinations. The examiners shall be compensated on the basis
25 32 of the normal workweek of the insurance division at a salary
25 33 to be fixed by the commissioner subject, however, to the
25 34 provisions of section 505.14. The compensation shall be paid
25 35 from appropriations for such purposes upon certification of
26 1 the commissioner, which shall be reimbursed as provided in
26 2 sections 507.8 and 507.9.

26 3 c. When making an examination under this chapter, the
26 4 commissioner may retain attorneys, appraisers, independent
26 5 actuaries, independent certified public accountants, or other
26 6 professionals and specialists as examiners, the reasonable
26 7 cost of which shall be borne by the company which is the
26 8 subject of the examination.

26 9 d. The commissioner shall, upon the completion of an
26 10 examination, or at such regular intervals prior to completion
26 11 as the commissioner determines, prepare an account of the
26 12 costs incurred in performing and preparing the report of such
26 13 examinations which shall be charged to and paid by the company
26 14 examined, and upon failure or refusal of a company examined to
26 15 pay such costs, the same may be recovered by the commissioner
26 16 or the attorney general in an action brought in the name of
26 17 the state, and the commissioner may also revoke the
26 18 certificate of authority of such company to transact business
26 19 within this state.

26 20 8. IMMUNITY FROM LIABILITY.

26 21 a. No cause of action shall arise, nor shall any liability
26 22 be imposed, against the commissioner, the commissioner's
26 23 authorized representatives, or any examiner appointed by the
26 24 commissioner for any statements made or conduct performed
26 25 reasonably and in good faith while carrying out the provisions
26 26 of this chapter.

26 27 b. No cause of action shall arise, nor shall any liability
26 28 be imposed, against any person for the act of communicating or
26 29 delivering information or data to the commissioner or the
26 30 commissioner's authorized representative or examiner pursuant
26 31 to an examination made under this chapter, if the act of
26 32 communication or delivery was performed reasonably and in good
26 33 faith and without fraudulent intent or the intent to deceive.
26 34 This paragraph does not abrogate or modify in any way any
26 35 common law or statutory privilege or immunity heretofore

27 1 enjoyed by any person identified in paragraph "a".
27 2 9. INVESTIGATIVE AUTHORITY OF THE COMMISSIONER. The
27 3 commissioner may investigate suspected fraudulent viatical
27 4 settlement acts and persons engaged in the business of
27 5 viatical settlements.

27 6 Sec. 8. NEW SECTION. 508E.8 DISCLOSURE TO VIATOR.

27 7 1. With each application for a viatical settlement, a
27 8 viatical settlement provider or viatical settlement broker
27 9 shall provide the viator with at least the following
27 10 disclosures no later than the time the application for the
27 11 viatical settlement contract is signed by all parties. The
27 12 disclosures shall be provided in a separate document that is
27 13 signed by the viator and the viatical settlement provider or
27 14 viatical settlement broker, and shall provide all of the
27 15 following information:

27 16 a. There are possible alternatives to viatical settlement
27 17 contracts including any accelerated death benefits or policy
27 18 loans offered under the viator's life insurance policy.

27 19 b. That a viatical settlement broker represents
27 20 exclusively the viator, and not the insurer or the viatical
27 21 settlement provider, and owes a fiduciary duty to the viator,
27 22 including a duty to act according to the viator's instructions
27 23 and in the best interest of the viator.

27 24 c. Some or all of the proceeds of the viatical settlement
27 25 may be taxable under federal income tax and state franchise
27 26 and income taxes, and assistance should be sought from a
27 27 professional tax advisor.

27 28 d. Proceeds of the viatical settlement could be subject to
27 29 the claims of creditors.

27 30 e. Receipt of the proceeds of a viatical settlement may
27 31 adversely affect the viator's eligibility for Medicaid or
27 32 other government benefits or entitlements, and advice should
27 33 be obtained from the appropriate government agencies.

27 34 f. The viator has the right to rescind a viatical
27 35 settlement contract before the earlier of thirty days after
28 1 the date upon which the viatical settlement contract is
28 2 executed by all parties or fifteen days after the viatical
28 3 settlement proceeds have been paid to the viator, as provided
28 4 in section 508E.10, subsection 3. Recision, if exercised by
28 5 the viator, is effective only if both notice of the recision
28 6 is given, and the viator repays all proceeds and any premiums,
28 7 loans, and loan interest paid on account of the viatical
28 8 settlement within the recision period. If the insured dies
28 9 during the recision period, the viatical settlement contract
28 10 shall be deemed to have been rescinded, subject to repayment
28 11 by the viator or the viator's estate of all viatical
28 12 settlement proceeds and any premiums, loans, and loan interest
28 13 that have been paid by the viatical settlement provider or
28 14 purchaser within sixty days of the insured's death.

28 15 g. Funds will be sent to the viator within three business
28 16 days after the viatical settlement provider has received the
28 17 insurer's or group administrator's written acknowledgment that
28 18 ownership of the policy or interest in the certificate has
28 19 been transferred and the beneficiary has been designated.

28 20 h. Entering into a viatical settlement contract may cause
28 21 other rights or benefits, including conversion rights and
28 22 waiver of premium benefits, that may exist under the policy or
28 23 certificate, to be forfeited by the viator. Assistance should
28 24 be sought from a financial adviser.

28 25 i. Disclosure to a viator shall include distribution of a
28 26 brochure describing the process of viatical settlements. The
28 27 national association of insurance commissioners form for the
28 28 brochure shall be used unless another form is developed or
28 29 approved by the commissioner.

28 30 j. The disclosure document shall contain the following
28 31 language:

28 32 "All medical, financial, or personal information solicited
28 33 or obtained by a viatical settlement provider or viatical
28 34 settlement broker about an insured, including the insured's
28 35 identity or the identity of family members, a spouse, or a
29 1 significant other may be disclosed as necessary to effect the
29 2 viatical settlement between the viator and the viatical
29 3 settlement provider. If you are asked to provide this
29 4 information, you will be asked to consent to the disclosure.
29 5 The information may be provided to someone who buys the policy
29 6 or provides funds for the purchase. You may be asked to renew
29 7 your permission to share information every two years."

29 8 k. Following execution of a viatical contract, the insured
29 9 may be contacted for the purpose of determining the insured's
29 10 health status and to confirm the insured's residential or
29 11 business street address and telephone number, or as otherwise
29 12 provided in this chapter. This contact shall be limited to
29 13 once every three months if the insured has a life expectancy
29 14 of more than one year, and no more than once per month if the
29 15 insured has a life expectancy of one year or less. All such
29 16 contracts shall be made only by a duly licensed viatical
29 17 settlement provider or by the authorized representative of a
29 18 duly licensed viatical settlement provider.

29 19 2. A viatical settlement provider shall provide the viator
29 20 with at least the following disclosures no later than the date
29 21 the viatical settlement contract is signed by all parties.
29 22 The disclosures shall be conspicuously displayed in the
29 23 viatical settlement contract or in a separate document signed
29 24 by the viator and provide all of the following information:

29 25 a. The affiliation, if any, between the viatical
29 26 settlement provider and the issuer of the insurance policy to
29 27 be viaticated.

29 28 b. The name, business address, and telephone number of the
29 29 viatical settlement provider.

29 30 c. If an insurance policy to be viaticated has been issued
29 31 as a joint policy or involves family riders or any coverage of
29 32 a life other than the insured under the policy to be
29 33 viaticated, a notice of the viator's possible loss of coverage
29 34 on the other lives under the policy and to consult with the
29 35 viator's insurance producer or the insurer issuing the policy
30 1 for advice on the proposed viatical settlement.

30 2 d. The dollar amount of the current death benefit payable
30 3 to the viatical settlement provider under the policy or
30 4 certificate. If known, the viatical settlement provider shall
30 5 also disclose the availability of any additional guaranteed
30 6 insurance benefits, the dollar amount of any accidental death
30 7 and dismemberment benefits under the policy or certificate,
30 8 and the extent to which the viator's interest in those
30 9 benefits will be transferred as a result of the viatical
30 10 settlement contract.

30 11 e. Whether the funds will be escrowed with an independent
30 12 third party during the transfer process, and if so, provide
30 13 the name, business address, and telephone number of the
30 14 independent third-party escrow agent, and the fact that the
30 15 viator or owner may inspect or receive copies of the relevant
30 16 escrow or trust agreements or documents.

30 17 3. A viatical settlement broker shall provide the viator
30 18 with at least the following disclosures no later than the date
30 19 the viatical settlement contract is signed by all parties.
30 20 The disclosures shall be conspicuously displayed in the
30 21 viatical settlement contract or in a separate document signed
30 22 by the viator and provide all of the following information:

30 23 a. The name, business address, and telephone number of the
30 24 viatical settlement broker.

30 25 b. A full, complete, and accurate description of all
30 26 offers, counteroffers, acceptances, and rejections relating to
30 27 the proposed viatical settlement contract.

30 28 c. Any affiliations or contractual arrangements between
30 29 the viatical settlement broker and any person making an offer
30 30 in connection with the proposed viatical settlement contracts.

30 31 d. The amount and method of calculating the broker's
30 32 compensation. As used in this paragraph, "compensation"
30 33 includes anything of value paid or given to a viatical
30 34 settlement broker for the placement of a policy.

30 35 e. Where any portion of the viatical settlement broker's
31 1 compensation, as defined in paragraph "d", is taken from a
31 2 proposed viatical settlement offer, the broker shall disclose
31 3 the total amount of the viatical settlement offer and the
31 4 percentage of the viatical settlement offer comprised by the
31 5 viatical settlement broker's compensation.

31 6 4. If the viatical settlement provider transfers ownership
31 7 or changes the beneficiary of the insurance policy, the
31 8 viatical settlement provider shall communicate in writing the
31 9 change in ownership or beneficiary to the insured within
31 10 twenty days after the change.

31 11 5. A viatical settlement provider shall provide the
31 12 viatical settlement purchaser with at least the following
31 13 disclosures prior to the date the viatical settlement purchase
31 14 agreement is signed by all parties. The disclosures shall be
31 15 conspicuously displayed in any viatical purchase contract or
31 16 in a separate document signed by the viatical settlement
31 17 purchaser and viatical settlement provider or viatical
31 18 settlement investment agent, and shall make the following
31 19 disclosure to the viatical settlement purchaser:

31 20 a. The viatical settlement purchaser will receive no
31 21 returns including dividends and interest, until the insured
31 22 dies and a death claim payment is made.

31 23 b. The actual annual rate of return on a viatical
31 24 settlement contract is dependent upon an accurate projection
31 25 of the insured's life expectancy, and the actual date of the
31 26 insured's death. An annual "guaranteed" rate of return is not
31 27 determinable.

31 28 c. The viaticated life insurance contract should not be
31 29 considered a liquid purchase since it is impossible to predict
31 30 the exact timing of its maturity and the funds probably are
31 31 not available until the death of the insured. There is no
31 32 established secondary market for resale of these products by
31 33 the viatical settlement purchaser.

31 34 d. The viatical settlement purchaser may lose all benefits
31 35 or may receive substantially reduced benefits if the insurer
32 1 goes out of business during the term of the viatical
32 2 investment.

32 3 e. The viatical settlement purchaser is responsible for
32 4 payment of the insurance premium or other costs related to the
32 5 policy, if required by the terms of the viatical purchase
32 6 agreement. These payments may reduce the viatical settlement
32 7 purchaser's return. If a party other than the viatical
32 8 settlement purchaser is responsible for the payment, the name
32 9 and address of that party also shall be disclosed.

32 10 f. The viatical settlement purchaser is responsible for
32 11 payment of the insurance premiums or other costs related to
32 12 the policy if the insured returns to health. The viatical
32 13 settlement provider shall disclose the amount of such
32 14 premiums, if applicable.

32 15 g. The name, business address, and telephone number of the
32 16 independent third party providing escrow services and the
32 17 relationship to the viatical settlement broker.

32 18 h. The amount of any trust fees or other expenses to be
32 19 charged to the viatical settlement purchaser shall be
32 20 disclosed.

32 21 i. Whether the viatical settlement purchaser is entitled
32 22 to a refund of all or part of the viatical settlement
32 23 purchaser's investment under the viatical settlement contract
32 24 if the policy is later determined to be null and void.

32 25 j. That group policies may contain limitations or caps in
32 26 the conversion rights, that additional premiums may have to be
32 27 paid if the policy is converted, the name of the party
32 28 responsible for the payment of the additional premiums, and,
32 29 if a group policy is terminated and replaced by another group
32 30 policy, that there may be no right to convert the original
32 31 coverage.

32 32 k. The risks associated with policy contestability
32 33 including but not limited to the risk that the viatical
32 34 settlement purchaser will have no claim or only a partial
32 35 claim to death benefits should the insurer rescind the policy
33 1 within the contestability period.

33 2 l. Whether the viatical settlement purchaser will be the
33 3 owner of the policy in addition to being the beneficiary, and
33 4 if the viatical settlement purchaser is the beneficiary only
33 5 and not also the owner, the special risks associated with that
33 6 status, including but not limited to the risk that the

33 7 beneficiary may be changed or the premium may not be paid.
33 8 m. The experience and qualifications of the person who
33 9 determines the life expectancy of the insured, including
33 10 in-house staff, independent physicians, and specialty firms
33 11 that weigh medical and actuarial data; the information this
33 12 projection is based on; and the relationship of the projection
33 13 maker to the viatical settlement provider, if any.

33 14 n. A brochure describing the process of investment in
33 15 viatical settlements. The national association of insurance
33 16 commissioners form for the brochure shall be used unless
33 17 another form is developed and approved by the commissioner.

33 18 6. A viatical settlement provider shall provide the
33 19 viatical settlement purchaser with at least the following
33 20 disclosures no later than at the time of the assignment,
33 21 transfer, or sale of all or a portion of an insurance policy.
33 22 The disclosures shall be contained in a document signed by the
33 23 viatical settlement purchaser and viatical settlement
33 24 provider, and shall make all of the following disclosures to
33 25 the viatical settlement purchaser:

33 26 a. All the life expectancy certifications obtained by the
33 27 provider in the process of determining the price paid to the
33 28 viator.

33 29 b. Whether premium payments or other costs related to the
33 30 policy have been escrowed. If escrowed, state the date upon
33 31 which the escrowed funds will be depleted and whether the
33 32 viatical settlement purchaser will be responsible for payment
33 33 of premiums thereafter and, if so, the amount of the premiums.

33 34 c. Whether premium payments or other costs related to the
33 35 policy have been waived. If waived, disclose whether the
34 1 viatical settlement purchaser will be responsible for payment
34 2 of the premiums if the insurer that wrote the policy
34 3 terminates the waiver after purchase and the amount of those
34 4 premiums.

34 5 d. The type of policy offered or sold, i.e., whole life,
34 6 term life, universal life, or a group policy certificate, any
34 7 additional benefits contained in the policy, and the current
34 8 status of the policy.

34 9 e. If the policy is term insurance, the special risks
34 10 associated with term insurance including but not limited to
34 11 the viatical settlement purchaser's responsibility for
34 12 additional premiums if the viator continues the term policy at
34 13 the end of the current term.

34 14 f. Whether the policy is contestable.

34 15 g. Whether the insurer that wrote the policy has any
34 16 additional rights that could negatively affect or extinguish
34 17 the viatical settlement purchaser's rights under the viatical
34 18 settlement contract, what these rights are, and under what
34 19 conditions these rights are activated.

34 20 h. The name and address of the person responsible for
34 21 monitoring the insured's condition. The viatical settlement
34 22 provider shall describe how often the monitoring of the
34 23 insured's condition is done, how the date of death is
34 24 determined, and how and when this information will be
34 25 transmitted to the viatical settlement purchaser.

34 26 Sec. 9. NEW SECTION. 508E.9 DISCLOSURE TO INSURER.

34 27 A viatical settlement broker, or viatical settlement
34 28 provider, shall fully disclose to an insurer a transaction or
34 29 series of transactions to which the viatical settlement broker
34 30 or viatical settlement provider is a party to originate,
34 31 renew, continue, or finance a life insurance policy with the
34 32 insurer for the purpose of engaging in the business of
34 33 viatical settlements at any time prior to, or during the first
34 34 five years after, issuance of the policy.

34 35 Sec. 10. NEW SECTION. 508E.10 GENERAL RULES.

35 1 1. a. A viatical settlement provider entering into a
35 2 viatical settlement contract shall first obtain all of the
35 3 following:

35 4 (1) If the viator is the insured, a written statement from
35 5 a licensed attending physician that the viator is of sound
35 6 mind and under no constraint or undue influence to enter into
35 7 a viatical settlement contract.

35 8 (2) A document in which the insured consents to the
35 9 release of the insured's medical records to a licensed
35 10 viatical settlement provider, viatical settlement broker, and,
35 11 if the policy was issued less than two years from the date of
35 12 application for a viatical settlement contract, the insurance
35 13 company that issued the life insurance policy covering the
35 14 life of the insured.

35 15 b. Within twenty days after a viator executes documents
35 16 necessary to transfer any rights under an insurance policy or
35 17 within twenty days of entering any agreement, option, promise,

35 18 or any other form of understanding, expressed or implied, to
35 19 viaticate the policy, the viatical settlement provider shall
35 20 give written notice to the insurer that issued that insurance
35 21 policy that the policy has or will become a viaticated policy.
35 22 The notice shall be accompanied by the documents required by
35 23 paragraph "c".

35 24 c. The viatical provider shall deliver a copy of the
35 25 medical release required under paragraph "a", subparagraph
35 26 (2), a copy of the viator's application for the viatical
35 27 settlement contract, the notice required under paragraph "b",
35 28 and a request for verification of coverage to the insurer that
35 29 issued the life policy that is the subject of the viatical
35 30 transaction. The national association of insurance
35 31 commissioners form for verification of coverage shall be used
35 32 unless another form is developed and approved by the
35 33 commissioner.

35 34 d. The insurer shall respond to a request for verification
35 35 of coverage submitted on an approved form by a viatical
36 1 settlement provider or viatical settlement broker within
36 2 thirty days of the date the request is received and shall
36 3 indicate whether, based on the medical evidence and documents
36 4 provided, the insurer intends to pursue an investigation at
36 5 this time regarding the validity of the insurance contract or
36 6 possible fraud. The insurer shall accept a request for
36 7 verification of coverage made on a national association of
36 8 insurance commissioners form or any other form developed and
36 9 approved by the commissioner. The insurer shall accept an
36 10 original, facsimile, or electronic copy of such request and
36 11 any accompanying authorization signed by the viator. A
36 12 failure by the insurer to meet its obligations under this
36 13 subsection shall be a violation of sections 508E.11 and
36 14 508E.17.

36 15 e. Prior to or at the time of execution of the viatical
36 16 settlement contract, the viatical settlement provider shall
36 17 obtain a witnessed document in which the viator consents to
36 18 the viatical settlement contract, represents that the viator
36 19 has a full and complete understanding of the viatical
36 20 settlement contract, that the viator has a full and complete
36 21 understanding of the benefits of the life insurance policy,
36 22 acknowledges that the viator is entering into the viatical
36 23 settlement contract freely and voluntarily, and, for persons
36 24 with a terminal or chronic illness or condition, acknowledges
36 25 that the insured has a terminal or chronic illness or
36 26 condition and that the terminal or chronic illness or
36 27 condition was diagnosed after the life insurance policy was
36 28 issued.

36 29 f. If a viatical settlement broker performs any of these
36 30 activities required of the viatical settlement provider, the
36 31 viatical settlement provider is deemed to have fulfilled the
36 32 requirements of this section.

36 33 2. All medical information solicited or obtained by any
36 34 licensee shall be subject to the applicable provisions of
36 35 state law relating to confidentiality of medical information,
37 1 including section 505.8.

37 2 3. All viatical settlement contracts entered into in this
37 3 state shall provide the viator with an absolute right to
37 4 rescind the contract before the earlier of thirty days after
37 5 the date upon which the viatical settlement contract is
37 6 executed by all parties or fifteen days after the viatical
37 7 settlement proceeds have been sent to the viator as provided
37 8 in section 508E.10, subsection 4. Recision by the viator may
37 9 be conditioned upon the viator both giving notice and repaying
37 10 to the viatical settlement provider within the recision period
37 11 all viatical settlement proceeds, and any premiums, loans, and
37 12 loan interest paid by or on behalf of the viatical settlement
37 13 provider in connection with or as a consequence of the
37 14 viatical settlement. If the insured dies during the recision
37 15 period, the viatical settlement contract shall be deemed to
37 16 have been rescinded, subject to repayment to the viatical
37 17 settlement provider or purchaser of all viatical settlement
37 18 proceeds, and any premiums, loans, and loan interest that have
37 19 been paid by the viatical settlement provider or purchaser,
37 20 which shall be paid within sixty days of the death of the
37 21 insured. In the event of any recision, if the viatical
37 22 settlement provider has paid commissions or other compensation
37 23 to a viatical settlement broker in connection with the
37 24 rescinded transaction, the viatical settlement broker shall
37 25 refund all such commissions and compensation to the viatical
37 26 settlement provider within five business days following
37 27 receipt of written demand from the viatical settlement
37 28 provider, which demand shall be accompanied by either the

viator's notice of rescission if rescinded at the election of the viator, or a notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

4. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider, the viatical settlement provider shall pay or transfer the viatical settlement proceeds into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the viatical settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust, or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the viatical settlement proceeds to the viator.

5. A failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to section 508E.8, subsection 1, paragraph "g", renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via the United States postal service or other nationally recognized delivery service.

6. A contact with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed pursuant to section 508E.3 or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contact with an insured for reasons other than determining the insured's health status. A viatical settlement provider and a viatical settlement broker shall be responsible for the actions of their authorized representatives.

Sec. 11. NEW SECTION. 508E.11 PROHIBITED PRACTICES.

1. Except as provided in section 508E.12, it is a violation of this chapter for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate.

2. An insurer shall not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign any form, disclosure, consent, or waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.

3. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within twenty days, with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting a change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

Sec. 12. NEW SECTION. 508E.12 PERMITTED PRACTICES.

40 5 1. Notwithstanding section 508E.11, at any time subsequent
40 6 to the issuance of the policy, a person may enter into a
40 7 viatical settlement contract if the viator certifies to the
40 8 viatical settlement provider that one or more of the following
40 9 conditions have been met within the five-year period:
40 10 a. The policy was issued upon the viator's exercise of
40 11 conversion rights arising out of a group or individual policy,
40 12 provided the total of the time covered under the conversion
40 13 policy plus the time covered under the prior policy is at
40 14 least sixty months. The time covered under a group policy
40 15 shall be calculated without regard to any change in insurance
40 16 carriers, provided the coverage has been continuous and under
40 17 the same group sponsorship.
40 18 b. The viator submits an affidavit to the viatical
40 19 settlement provider that one or more of the following
40 20 conditions exists:
40 21 (1) The viator or insured is terminally or chronically
40 22 ill.
40 23 (2) The viator's spouse or child dies.
40 24 (3) The viator divorces the viator's spouse.
40 25 (4) The viator retires from full-time employment.
40 26 (5) The viator becomes physically or mentally disabled and
40 27 a physician determines that the disability prevents the viator
40 28 from maintaining full-time employment.
40 29 (6) The viator has filed for bankruptcy or sought
40 30 reorganization in a court of competent jurisdiction, or a
40 31 court of competent jurisdiction has appointed a receiver,
40 32 trustee, or liquidator to all or a substantial part of the
40 33 viator's assets.
40 34 (7) Other circumstances as established as eligible
40 35 exemptions by the commissioner by rule, including but not
41 1 limited to substantial adverse financial circumstances or
41 2 other factors substantially affecting the viator.
41 3 2. Notwithstanding section 508E.11, a person may enter
41 4 into a viatical settlement contract if at all times prior to
41 5 the date that is two years after policy issuance, all of the
41 6 following conditions are met with respect to the policy:
41 7 a. Policy premiums have been funded exclusively with any
41 8 of the following:
41 9 (1) Unencumbered assets, including an interest in the life
41 10 insurance policy being financed only to the extent of its net
41 11 cash surrender value, provided by a person described in
41 12 section 508E.2, subsection 15, paragraph "d".
41 13 (2) Fully recourse liability incurred by the insured or a
41 14 person described in section 508E.2, subsection 15, paragraph
41 15 "d".
41 16 b. There is no agreement or understanding with any other
41 17 person to guarantee any such liability or to purchase, or
41 18 stand ready to purchase, the policy, including through an
41 19 assumption or forgiveness of the loan.
41 20 c. Neither the insured nor the policy has been evaluated
41 21 for settlement.
41 22 3. Copies of the affidavits described in this section and
41 23 documents required by section 508E.10, subsection 1, shall be
41 24 submitted to the insurer when the viatical settlement provider
41 25 or viatical settlement broker submits a request to the insurer
41 26 for verification of coverage. The copies shall be accompanied
41 27 by a letter of attestation from the viatical settlement
41 28 provider that the copies are true and correct copies of the
41 29 documents received by the viatical settlement provider.
41 30 4. If the viatical settlement provider submits to the
41 31 insurer a copy of the owner's or insured's or insurer's
41 32 affidavit described in this section when the provider submits
41 33 a request to the insurer to effect the transfer of the policy
41 34 or certificate to the viatical settlement provider, the copy
41 35 shall be deemed to conclusively establish that the viatical
42 1 settlement contract satisfies the requirement of this section
42 2 and the insurer shall timely respond to the request.
42 3 Sec. 13. NEW SECTION. 508E.13 PROHIBITED PRACTICES AND
42 4 CONFLICTS OF INTEREST.
42 5 1. With respect to any viatical settlement contract or
42 6 insurance policy, a viatical settlement broker shall not
42 7 knowingly solicit an offer from, effectuate a viatical
42 8 settlement with, or make a sale to any viatical settlement
42 9 provider, viatical settlement purchaser, financing entity, or
42 10 related provider trust that is controlling, controlled by, or
42 11 under common control with such viatical settlement broker
42 12 unless such relationship is disclosed to the viator.
42 13 2. With respect to any viatical settlement contract or
42 14 insurance policy, a viatical settlement provider shall not
42 15 knowingly enter into a viatical settlement contract with a

viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract unless such relationship is disclosed to the viator.

3. A viatical settlement provider shall not enter into a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person or agency shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any viatical settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement. Any payments, charges, fees, normal insurance commissions, or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of the overpayment.

4. A violation of subsection 1, 2, or 3 shall be deemed a fraudulent viatical settlement act.

5. A person shall not issue, solicit, market, or otherwise promote the purchase of an insurance policy for the sole purpose of or with a primary emphasis on settling the policy.

6. A person providing premium financing shall not receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on such loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter. Any payments, charges, fees, or other amounts received by a person providing premium financing in violation of this subsection shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of overpayment.

7. In the solicitation, application for, or issuance of a life insurance policy, a person shall not employ any device, scheme, or artifice to create an insurable interest in the life of a person except as provided in sections 511.39 and 511.40.

8. No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials, as may be prescribed by rules adopted by the commissioner, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is free for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this chapter.

9. No life insurance producer, insurance company, viatical settlement broker, or viatical settlement provider shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

Sec. 14. NEW SECTION. 508E.14 ADVERTISING FOR VIATICAL SETTLEMENTS.

The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by rules adopted by the commissioner for the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising, and is

44 27 conducive to accurate presentation and description of viatical
44 28 settlements through the advertising media and materials used
44 29 by viatical settlement licensees.

44 30 1. This section shall apply to any advertising of viatical
44 31 settlement contracts or related products or services intended
44 32 for dissemination in this state, including internet
44 33 advertising viewed by persons located in this state. Where
44 34 disclosure requirements are established pursuant to federal
44 35 regulation, this section shall be interpreted so as to
45 1 minimize or eliminate conflict with federal regulation
45 2 wherever possible.

45 3 2. Every viatical settlement licensee shall establish and
45 4 at all times maintain a system of control over the content,
45 5 form, and method of dissemination of all advertisements of its
45 6 contracts, products, and services. All advertisements,
45 7 regardless of by whom written, created, designed, or
45 8 presented, shall be the responsibility of the viatical
45 9 settlement licensees, as well as the individual who created or
45 10 presented the advertisement. A system of control shall
45 11 include regular, routine notification, at least once a year,
45 12 to agents and others authorized by the viatical settlement
45 13 licensee who disseminate advertisements of the requirements
45 14 and procedures for approval prior to the use of any
45 15 advertisements not furnished by the viatical settlement
45 16 licensee.

45 17 3. An advertisement shall be truthful and not misleading
45 18 in fact or by implication. The form and content of an
45 19 advertisement of a viatical settlement contract shall be
45 20 sufficiently complete and clear so as to avoid deception. It
45 21 shall not have the capacity or tendency to mislead or deceive.
45 22 Whether an advertisement has the capacity or tendency to
45 23 mislead or deceive shall be determined by the commissioner
45 24 from the overall impression that the advertisement may be
45 25 reasonably expected to create upon a person of average
45 26 education or intelligence within the segment of the public to
45 27 which it is directed.

45 28 4. The information required to be disclosed under this
45 29 section shall not be minimized, rendered obscure, or presented
45 30 in an ambiguous fashion or intermingled with the text of the
45 31 advertisement so as to be confusing or misleading.

45 32 a. An advertisement shall not omit material information or
45 33 use words, phrases, statements, references, or illustrations
45 34 if the omission or use has the capacity, tendency, or effect
45 35 of misleading or deceiving viators as to the nature or extent
46 1 of any benefit, loss covered, premium payable, or state or
46 2 federal tax consequence. The fact that the viatical
46 3 settlement contract offered is made available for inspection
46 4 prior to consummation of the sale, or an offer is made to
46 5 refund the payment if the viator is not satisfied or that the
46 6 viatical settlement contract includes a free-look period that
46 7 satisfies or exceeds legal requirements, does not remedy a
46 8 misleading statement.

46 9 b. An advertisement shall not use the name or title of a
46 10 life insurance company or a life insurance policy unless the
46 11 advertisement has been approved by the insurer.

46 12 c. An advertisement shall not state or imply that interest
46 13 charged on an accelerated death benefit or a policy loan is
46 14 unfair, inequitable, or in any manner an incorrect or improper
46 15 practice.

46 16 d. The words "free", "no cost", "without cost", "no
46 17 additional cost", "at no extra cost", or words of similar
46 18 import shall not be used with respect to any benefit or
46 19 service unless true. An advertisement may specify the charge
46 20 for a benefit or a service or may state that a charge is
46 21 included in the payment or use other appropriate language.

46 22 e. Testimonials, appraisals, analyses, or endorsements
46 23 used in advertisements must be genuine; represent the current
46 24 opinion of the author; be applicable to the viatical
46 25 settlement contract product or service advertised, if any; and
46 26 be accurately reproduced with sufficient completeness to avoid
46 27 misleading or deceiving prospective viators as to the nature
46 28 or scope of the testimonials, appraisal, analysis, or
46 29 endorsement. In using a testimonial, appraisal, analysis, or
46 30 endorsement, a licensee under this chapter makes as its own
46 31 all the statements contained therein, and the statements are
46 32 subject to all of the provisions of this section.

46 33 (1) If the individual making a testimonial, appraisal,
46 34 analysis, or an endorsement has a financial interest in the
46 35 party making use of the testimonial, appraisal, analysis, or
47 1 endorsement, either directly or through a related entity as a
47 2 stockholder, director, officer, employee, or otherwise, or

47 3 receives any benefit directly or indirectly other than
47 4 required union scale wages, that fact shall be prominently
47 5 disclosed in the advertisement.

47 6 (2) An advertisement shall not state or imply that a
47 7 viatical settlement contract benefit or product or service has
47 8 been approved or endorsed by a group of individuals, society,
47 9 association, or other organization unless that is the fact and
47 10 unless any relationship between an organization and the
47 11 viatical settlement licensee is disclosed. If the entity
47 12 making the endorsement or testimonial is owned, controlled, or
47 13 managed by the viatical settlement licensee, or receives any
47 14 payment or other consideration from the viatical settlement
47 15 licensee for making an endorsement or testimonial, that fact
47 16 shall be disclosed in the advertisement.

47 17 (3) When an endorsement refers to benefits received under
47 18 a viatical settlement contract, all pertinent information
47 19 shall be retained by the viatical settlement licensee for a
47 20 period of five years after its use.

47 21 5. An advertisement shall not contain statistical
47 22 information unless it accurately reflects recent and relevant
47 23 facts. The source of all statistics used in an advertisement
47 24 shall be identified.

47 25 6. An advertisement shall not disparage an insurer,
47 26 viatical settlement provider, viatical settlement broker,
47 27 insurance producer, policy, services, or methods of marketing.

47 28 7. The name of the viatical settlement licensee shall be
47 29 clearly identified in all advertisements about the viatical
47 30 settlement licensee or its viatical settlement contract,
47 31 products, or services, and if any specific viatical settlement
47 32 contract is advertised, the viatical settlement contract shall
47 33 be identified either by form number or some other appropriate
47 34 description. If an application is part of the advertisement,
47 35 the name of the viatical settlement provider shall be shown on
48 1 the application.

48 2 8. An advertisement shall not use a trade name, group
48 3 designation, name of the parent company of a viatical
48 4 settlement licensee, name of a particular division of the
48 5 viatical settlement licensee, service mark, slogan, symbol or
48 6 other device, or reference without disclosing the name of the
48 7 viatical settlement licensee, if the advertisement would have
48 8 the capacity or tendency to mislead or deceive as to the true
48 9 identity of the viatical settlement licensee, or to create the
48 10 impression that a company other than the viatical settlement
48 11 licensee would have any responsibility for the financial
48 12 obligation under a viatical settlement contract.

48 13 9. An advertisement shall not use any combination of
48 14 words, symbols, or physical materials that by their content,
48 15 phraseology, shape, color, or other characteristics are so
48 16 similar to a combination of words, symbols, or physical
48 17 materials used by a government program or agency or otherwise
48 18 appear to be of such a nature that they tend to mislead
48 19 prospective viators into believing that the solicitation is in
48 20 some manner connected with a government program or agency.

48 21 10. An advertisement may state that a viatical settlement
48 22 licensee is licensed in the state where the advertisement
48 23 appears, provided it does not exaggerate that fact or suggest
48 24 or imply that a competing viatical settlement licensee may not
48 25 be so licensed. The advertisement may ask the audience to
48 26 consult the viatical settlement licensee's internet site or
48 27 contact the commissioner to find out if the state requires
48 28 licensing and, if so, whether the viatical settlement provider
48 29 or viatical settlement broker is licensed.

48 30 11. An advertisement shall not create the impression that
48 31 the viatical settlement provider, its financial condition or
48 32 status, the payment of its claims or the merits, desirability,
48 33 or advisability of its viatical settlement contracts are
48 34 recommended or endorsed by any government entity.

48 35 12. The name of the actual viatical settlement licensee
49 1 shall be stated in each of its advertisements. An
49 2 advertisement shall not use a trade name, any group
49 3 designation, name of any affiliate, or controlling entity of
49 4 the viatical settlement licensee, service mark, slogan,
49 5 symbol, or other device in a manner that would have the
49 6 capacity or tendency to mislead or deceive as to the true
49 7 identity of the actual viatical settlement licensee or create
49 8 the false impression that an affiliate or controlling entity
49 9 would have any responsibility for the financial obligation of
49 10 the viatical settlement licensee.

49 11 13. An advertisement shall not directly or indirectly
49 12 create the impression that any division or agency of the state
49 13 or of the United States government endorses, approves, or

49 14 favors any of the following:
49 15 a. A viatical settlement licensee or its business
49 16 practices or methods of operation.
49 17 b. The merits, desirability, or advisability of any
49 18 viatical settlement contract.
49 19 c. Any viatical settlement contract.
49 20 d. Any life insurance policy or life insurance company.
49 21 14. If the advertiser emphasizes the speed with which the
49 22 viatication will occur, the advertising must disclose the
49 23 average time frame from completed application to the date of
49 24 offer and from acceptance of the offer to receipt of the funds
49 25 by the viator.
49 26 15. If the advertising emphasizes the dollar amounts
49 27 available to viators, the advertising shall disclose the
49 28 average purchase price as a percent of face value obtained by
49 29 viators contracting with the licensee during the past six
49 30 months.
49 31 Sec. 15. NEW SECTION. 508E.15 FRAUD PREVENTION AND
49 32 CONTROL.
49 33 1. FRAUDULENT VIATICAL SETTLEMENT ACTS == INTERFERENCE AND
49 34 PARTICIPATION OF CONVICTED FELONS PROHIBITED.
49 35 a. A person shall not commit a fraudulent viatical
50 1 settlement act.
50 2 b. A person shall not knowingly or intentionally interfere
50 3 with the enforcement of the provisions of this chapter or
50 4 investigations of suspected or actual violations of this
50 5 chapter.
50 6 c. A person in the business of viatical settlements shall
50 7 not knowingly or intentionally permit any person convicted of
50 8 a felony involving dishonesty or breach of trust to
50 9 participate in the business of viatical settlements.
50 10 2. FRAUD WARNING REQUIRED.
50 11 a. A viatical settlements contract and application for a
50 12 viatical settlement, regardless of the form of transmission,
50 13 shall contain the following statement or a substantially
50 14 similar statement:
50 15 "Any person who knowingly presents false information in an
50 16 application for insurance or viatical settlement contract is
50 17 guilty of a crime and may be subject to fines and confinement
50 18 in prison."
50 19 b. The lack of a statement as required in paragraph "a"
50 20 does not constitute a defense in any prosecution for a
50 21 fraudulent viatical settlement act.
50 22 3. MANDATORY REPORTING OF FRAUDULENT VIATICAL SETTLEMENT
50 23 ACTS.
50 24 a. Any person engaged in the business of viatical
50 25 settlements having knowledge or a reasonable suspicion that a
50 26 fraudulent viatical settlement act is being, will be, or has
50 27 been committed shall provide to the commissioner such
50 28 information as required by and in a manner prescribed by rules
50 29 adopted by the commissioner.
50 30 b. Any other person having knowledge or a reasonable
50 31 belief that a fraudulent viatical settlement act is being,
50 32 will be, or has been committed may provide to the commissioner
50 33 the information required by and in a manner prescribed by
50 34 rules adopted by the commissioner.
50 35 4. IMMUNITY FROM LIABILITY.
51 1 a. No civil liability shall be imposed on and no cause of
51 2 action shall arise from a person, who acting reasonably and in
51 3 good faith, furnishes information concerning suspected,
51 4 anticipated, or completed fraudulent viatical settlement acts
51 5 or suspected or completed fraudulent insurance acts, if the
51 6 information is provided to or received from any of the
51 7 following:
51 8 (1) The commissioner or the commissioner's employees,
51 9 agents, or representatives.
51 10 (2) A federal, state, or local law enforcement or
51 11 regulatory official or the official's employees, agents, or
51 12 representatives.
51 13 (3) A person involved in the prevention and detection of
51 14 fraudulent viatical settlement acts or that person's agents,
51 15 employees, or representatives.
51 16 (4) The national association of insurance commissioners;
51 17 the national association of securities dealers; the north
51 18 American securities administrators association; their
51 19 employees, agents, or representatives; or other regulatory
51 20 body overseeing life insurance, viatical settlements,
51 21 securities, or investment fraud.
51 22 (5) A life insurer that issued the life insurance policy
51 23 covering the life of the insured.
51 24 b. Paragraph "a" does not apply to a statement made in bad

51 25 faith or with actual malice. In an action brought against a
51 26 person for filing a report or furnishing other information
51 27 concerning a fraudulent viatical settlement act, the party
51 28 bringing the action shall plead specifically any allegation
51 29 that paragraph "a" does not apply because the person filing
51 30 the report or furnishing the information did so in bad faith
51 31 or with actual malice.

51 32 c. A person furnishing information as identified in
51 33 paragraph "a" shall be entitled to an award of attorney fees
51 34 and costs if the person is the prevailing party in a civil
51 35 cause of action for libel, slander, or any other relevant tort
52 1 arising out of an activity in carrying out the provisions of
52 2 this chapter and the party bringing the action was not
52 3 substantially justified in doing so. For purposes of this
52 4 paragraph, a proceeding is substantially justified if it had a
52 5 reasonable basis in law or fact at the time that it was
52 6 initiated. However, such an award does not apply to any
52 7 person furnishing information concerning the person's own
52 8 fraudulent viatical settlement act.

52 9 d. This section does not abrogate or modify a common law
52 10 or statutory privilege or immunity enjoyed by a person
52 11 described in paragraph "a".

52 12 5. CONFIDENTIALITY.

52 13 a. A document or evidence provided pursuant to subsection
52 14 4 or obtained by the commissioner in an investigation of a
52 15 suspected or actual fraudulent viatical settlement act shall
52 16 be privileged and confidential, notwithstanding chapter 22,
52 17 shall not be a public record, and shall not be subject to
52 18 discovery or subpoena in a civil or criminal action.

52 19 b. Paragraph "a" does not prohibit the release by the
52 20 commissioner of a document or evidence obtained in an
52 21 investigation of a suspected or actual fraudulent viatical
52 22 settlement act if any of the following applies:

52 23 (1) In an administrative or judicial proceeding to enforce
52 24 laws administered by the commissioner.

52 25 (2) To a federal, state, or local law enforcement or
52 26 regulatory agency, to an organization established for the
52 27 purpose of detecting and preventing fraudulent viatical
52 28 settlement acts, or to the national association of insurance
52 29 commissioners.

52 30 (3) At the discretion of the commissioner, to a person in
52 31 the business of viatical settlements that is aggrieved by a
52 32 fraudulent viatical settlement act.

52 33 c. Release of a document or evidence under paragraph "b"
52 34 does not abrogate or modify the privilege granted in paragraph
52 35 "a".

53 1 6. OTHER LAW ENFORCEMENT OR REGULATORY AUTHORITY. This
53 2 chapter shall not do any of the following:

53 3 a. Preempt the authority or relieve the duty of other law
53 4 enforcement or regulatory agencies to investigate, examine,
53 5 and prosecute suspected violations of law.

53 6 b. Prevent or prohibit a person from disclosing
53 7 voluntarily information concerning viatical settlement fraud
53 8 to a law enforcement or regulatory agency other than the
53 9 commissioner.

53 10 c. Limit the powers granted elsewhere by the laws of this
53 11 state to the commissioner or an insurance fraud unit to
53 12 investigate and examine possible violations of law and to take
53 13 appropriate action against wrongdoers.

53 14 7. VIATICAL SETTLEMENT ANTIFRAUD INITIATIVES.

53 15 a. A viatical settlement provider or viatical settlement
53 16 broker shall have in place antifraud initiatives reasonably
53 17 calculated to detect, prosecute, and prevent fraudulent
53 18 viatical settlement acts. At the discretion of the
53 19 commissioner, the commissioner may order, or a licensee may
53 20 request and the commissioner may grant, such modifications of
53 21 the following required initiatives as necessary to ensure an
53 22 effective antifraud program. The modifications may be more or
53 23 less restrictive than the required initiatives so long as the
53 24 modifications may reasonably be expected to accomplish the
53 25 purpose of this section.

53 26 b. Antifraud initiatives shall include all of the
53 27 following:

53 28 (1) A fraud investigator, who may be a viatical settlement
53 29 provider, viatical settlement broker, a viatical settlement
53 30 provider's or viatical settlement broker's employee, or an
53 31 independent contractor.

53 32 (2) An antifraud plan, which shall be submitted to the
53 33 commissioner. The antifraud plan shall include, but is not
53 34 limited to all of the following:

53 35 (a) A description of the procedures for detecting and

54 1 investigating possible fraudulent viatical settlement acts and
54 2 procedures for resolving material inconsistencies between
54 3 medical records and insurance applications.
54 4 (b) A description of the procedures for reporting possible
54 5 fraudulent viatical settlement acts to the commissioner.
54 6 (c) A description of the plan for antifraud education and
54 7 training of underwriters and other personnel.
54 8 (d) A description or chart outlining the organizational
54 9 arrangement of the antifraud personnel who are responsible for
54 10 the investigation and reporting of possible fraudulent
54 11 viatical settlement acts and investigating unresolved material
54 12 inconsistencies between medical records and insurance
54 13 applications.
54 14 c. An antifraud plan submitted to the commissioner shall
54 15 be privileged and confidential, notwithstanding chapter 22,
54 16 shall not be a public record, and shall not be subject to
54 17 discovery or subpoena in a civil or criminal action.
54 18 Sec. 16. NEW SECTION. 508E.16 INJUNCTIONS == CIVIL
54 19 REMEDIES == CEASE AND DESIST ORDERS == CIVIL PENALTY.
54 20 1. In addition to the penalties and other enforcement
54 21 provisions of this chapter, if any person violates this
54 22 chapter or any rule implementing this chapter, the
54 23 commissioner may seek an injunction in a court of competent
54 24 jurisdiction and may apply for a temporary or permanent order
54 25 that the commissioner determines is necessary to restrain the
54 26 person from committing the violation.
54 27 2. A person damaged by the act of a person in violation of
54 28 this chapter may bring a civil action against the person
54 29 committing the violation in a court of competent jurisdiction.
54 30 3. The commissioner may issue, in accordance with chapter
54 31 17A, a cease and desist order upon a person that violates any
54 32 provision of this chapter, any rule or order adopted by the
54 33 commissioner, or any written agreement entered into with the
54 34 commissioner.
54 35 4. When the commissioner finds that an activity in
55 1 violation of this chapter presents an immediate danger to the
55 2 health, safety, or welfare of the public requiring immediate
55 3 agency action, the commissioner may proceed under section
55 4 17A.18A.
55 5 5. In addition to the penalties and other enforcement
55 6 provisions of this chapter, any person who violates this
55 7 chapter is subject to a civil penalty of up to five thousand
55 8 dollars for each violation of this chapter. The civil penalty
55 9 shall be deposited into the general fund of the state. If a
55 10 person has not been ordered to pay restitution by a court, the
55 11 commissioner's order may require a person found to be in
55 12 violation of this chapter to make restitution to a person
55 13 aggrieved by a violation of this chapter.
55 14 6. Except for a fraudulent viatical settlement act
55 15 committed by a viator, the enforcement provisions and
55 16 penalties of this section shall not apply to a viator.
55 17 Sec. 17. NEW SECTION. 508E.17 UNFAIR TRADE PRACTICES.
55 18 A violation of this chapter, including the commission of a
55 19 fraudulent viatical settlement act, is an unfair trade
55 20 practice under chapter 507B and a person convicted of the
55 21 violation is subject to the penalties contained in that
55 22 chapter.
55 23 Sec. 18. NEW SECTION. 508E.18 CRIMINAL PENALTIES.
55 24 1. a. A person acting in this state as a viatical
55 25 settlement provider or viatical settlement broker, without
55 26 being licensed pursuant to section 508E.3, who willfully
55 27 violates any provision of this chapter or any rule adopted or
55 28 order issued under this chapter, is guilty of a class "D"
55 29 felony.
55 30 b. A person acting in this state as a viatical settlement
55 31 provider or viatical settlement broker, without proper
55 32 licensure who willfully violates any provision of this
55 33 chapter, or any rule adopted or order issued under this
55 34 chapter, and when such violation results in a loss of more
55 35 than ten thousand dollars, is guilty of a class "C" felony.
56 1 2. The commissioner may refer such evidence as is
56 2 available concerning violations of this chapter or of any rule
56 3 adopted or order issued under this chapter, or of the failure
56 4 of a person to comply with the licensing requirements of this
56 5 chapter, to the attorney general or the proper county attorney
56 6 who may, with or without such reference, institute the
56 7 appropriate criminal proceedings under this chapter.
56 8 Sec. 19. NEW SECTION. 508E.19 AUTHORITY TO PROMULGATE
56 9 RULES.
56 10 The commissioner shall have the authority to do all of the
56 11 following:

56 12 1. Adopt rules implementing and administering this
56 13 chapter.
56 14 2. Establish standards for evaluating reasonableness of
56 15 payments under viatical settlement contracts for persons who
56 16 are terminally or chronically ill. This authority includes
56 17 but is not limited to regulation of discount rates used to
56 18 determine the amount paid in exchange for assignment,
56 19 transfer, sale, devise, or bequest of a benefit under a life
56 20 insurance policy insuring the life of a person who is
56 21 chronically or terminally ill.
56 22 3. Establish appropriate licensing requirements, fees, and
56 23 standards for continued licensure for viatical settlement
56 24 providers and brokers.
56 25 4. Require a bond or other mechanism for financial
56 26 accountability for viatical settlement providers and viatical
56 27 settlement brokers.
56 28 5. Adopt rules governing the relationship and
56 29 responsibilities of both insurers and viatical settlement
56 30 providers and viatical settlement brokers during the
56 31 viatication of a life insurance policy or certificate.

56 32 Sec. 20. Section 507B.3, subsection 1, Code 2007, is
56 33 amended to read as follows:

56 34 1. A person shall not engage in this state in any trade
56 35 practice which is defined in this chapter as, or determined
57 1 pursuant to section 507B.6 to be, an unfair method of
57 2 competition, or an unfair or deceptive act or practice in the
57 3 business of insurance.

57 4 a. A person who violates a provision in chapter 508E shall
57 5 be deemed to have committed an unfair trade practice under
57 6 this chapter.

57 7 b. The issuance of a qualified charitable gift annuity as
57 8 provided in chapter 508F does not constitute a trade practice
57 9 in violation of this chapter.

57 10 Sec. 21. CODIFICATION.

57 11 1. The Code editor shall codify section 508E.1 as section
57 12 508E.1A.

57 13 2. The Code editor shall codify section 508E.1A, as
57 14 enacted in this Act, as section 508E.1.

57 15 Sec. 22. Section 508E.3A, Code 2007, is repealed.

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57 19 _____
57 20 JOHN P. KIBBIE
57 21 President of the Senate

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57 24 _____
57 25 PATRICK J. MURPHY
57 26 Speaker of the House

57 27 I hereby certify that this bill originated in the Senate and
57 28 is known as Senate File 2392, Eighty-second General Assembly.

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57 32 _____
57 33 MICHAEL E. MARSHALL
57 34 Secretary of the Senate

57 35 Approved _____, 2008

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58 3 _____
58 4 CHESTER J. CULVER
58 5 Governor